



## **General terms and conditions for UPU mobile applications**

### **1 Applicability and legal status of the parties**

- 1.1 The Universal Postal Union, an intergovernmental organization and specialized agency of the United Nations with headquarters at Weltpoststrasse 4, 3000 Berne 15, Switzerland (hereinafter the “UPU”), and the Licensee as defined below in article 2.7, may also be individually referred to hereunder as “Party” or collectively as “Parties”.
- 1.2 By installing, accessing or using any UPU App (as defined below in article 2.13), the Licensee acknowledges and agrees to these General Terms and Conditions (hereinafter “GTC”) and that these shall apply to any such UPU Apps.
- 1.3 The UPU may unilaterally and at any time amend these GTC with effect for all Licensees. The amended version of these GTC shall come into effect when distributed with new releases of UPU Apps or as notified by the UPU to the Licensees.
- 1.4 The installation and use of UPU Apps by the Licensee shall not represent, and shall in no way imply, a partnership, joint venture or employment between the Parties, or an authorization for either Party to act as the agent or representative of the other Party.
- 1.5 UPU Apps are developed and owned by the UPU. They may not be used in any way other than as provided for in these GTC.
- 1.6 Pursuant, *inter alia*, to the UPU Constitution, the Convention on Privileges and Immunities of the Specialized Agencies, the Agreement on Privileges and Immunities of the United Nations concluded by the Swiss Federal Council and the Secretary General of the United Nations – RS 0.192.120.1 (on Swiss territory), as well as any other conventions and laws granting and/or recognizing such privileges, immunities and facilities to the UPU and its officials, the UPU has full juridical personality and enjoys such privileges and immunities as are necessary for the independent fulfilment of its purposes.
- 1.7 The UPU reserves the right, at any time, to specify that certain UPU Apps shall be subject to separate terms and conditions other than these GTC (where, as applicable, Licensees may be required to separately consent in order to be able to install and use such UPU Apps).
- 1.8 By agreeing to these GTC, the Licensee also agrees to receive new releases automatically.
- 1.9 These GTC shall not confer any third-party beneficiary rights. All of the UPU’s rights and obligations under these GTC shall be freely assignable by the UPU in accordance with the relevant decisions of its bodies. For the avoidance of doubt, nothing in these GTC shall confer a third-party beneficiary right upon any party with respect to any provisions or agreements incorporated by reference, or that may be referenced without incorporation, in these GTC.

### **2 Definitions**

Capitalized terms used in the UPU App and these GTC shall have the meaning defined below:

#### **2.1 Data**

Means any information supplied by the Licensee for and throughout its installation and use of UPU Apps.

#### **2.2 Device**

Means any hardware, component or associated system upon which UPU Apps may be installed and used (including, without limitation, computers, smartphones, smart watches and tablets) under these GTC.

### 2.3 *Documentation*

Means any conditions, policies, operating manuals, instructions and other related material regarding the use of UPU Apps and provided to the Licensee, in a format defined at the sole discretion of the UPU.

### 2.4 *Effective Date*

Means the date on which the Licensee has successfully installed the UPU App onto its Device. On the Effective Date, the UPU shall be deemed to have delivered the UPU App to the Licensee.

### 2.5 *Installation*

Means the process employed by the Licensee to install a UPU App onto the Licensee's Device following download of the UPU App from the distribution point provided by the UPU.

### 2.6 *Interconnection*

Means the interfacing of the UPU Network with other networks, used by UPU Service Operators for the operation of international postal services and fulfilment of the obligations arising from the UPU Acts, as well as to facilitate postal data transfers between UPU Service Operators using different networks and/or other postal supply chain stakeholders. Interconnection of the UPU network shall be compatible with the mission and objectives of the UPU.

### 2.7 *Licensee*

Means the user granted a licence to use UPU Apps for the purposes outlined in article 2.13. The Licensee shall be the recipient of services provided by a UPU Service Operator as defined in article 2.15. The Licensee shall be authorized to install and use UPU Apps solely for the purposes specified herein.

### 2.8 *Maintenance*

Means the technical support provided by the UPU and the UPU Service Operator, including the provision of New Releases and of technical and functional upgrades to UPU Apps as deemed necessary to implement the UPU Acts and UPU technical standards.

### 2.9 *New Features*

Means the development of new functionalities for UPU Apps by the UPU, which may subsequently be included in the form of New Releases.

### 2.10 *New Releases*

Means the updated releases of UPU Apps automatically made available to all Licensees. Depending on the character of the changes added, New Releases may consist of updated major versions, updated minor versions or updated build numbers or bug fixes, enhanced functions, missing plug-ins and new versions. Such New Releases may be necessary in order for the Licensee to use the UPU Apps.

### 2.11 *Public API*

Means any Application Programming Interface (API) provided as a UPU Software option which allows the Licensee to use the UPU Software to exchange operational data electronically with authorized partners (i.e. postal supply chain stakeholders) of the Licensee.

### 2.12 *Third Party*

Means a legal or natural person which is not a party to these GTC, except in the case of legal or natural persons specifically assigned by the UPU to install or use UPU Apps in accordance with the provisions of these GTC.

### 2.13 *UPU App*

Means any mobile software application developed by the UPU and licensed under these GTC, including without limitation applications, services, features, or software provided to the Licensee on Devices.

#### 2.13.1 *EAD App*

The EAD (Electronic Advanced Data) application has been developed by the UPU with the aim of facilitating the declaration and management of customs-related information for the Licensee's international postal shipments, in order to accelerate customs clearance processes in the country of destination. In particular, the EAD App aims at digitizing the official UPU forms CN 22 and CN 23 (green forms), in order to i) streamline access to international postal services; ii) in accordance with the Acts of the UPU, provide support to, and foster interoperability between, relevant postal supply chain stakeholders in the UPU Network; and iii) control flows of prohibited and restricted goods.

### 2.14 *UPU Network*

Means the backbone supporting the use of UPU Apps by Licensees; access to the UPU Network is possible through a local Internet Service Provider (ISP).

### 2.15 *UPU Service Operator*

The entity licensed by the UPU to access and operate UPU Software; the latter shall interact with UPU Apps in order to facilitate the provision and exchange of international postal services by UPU Service Operators as defined in the UPU Acts. UPU Service Operators may comprise postal supply chain stakeholders such as, inter alia, airlines, customs authorities and designated operators.

### 2.16 *UPU Software*

Means the applications provided by the UPU to the UPU Service Operator in accordance with the UPU Acts.

## **3 Scope of delivery**

### 3.1 *Scope*

The UPU shall grant and deliver the following to the Licensee:

#### 3.2 *Installation of the UPU App*

- 3.2.1 The UPU App shall be installed by the Licensee from the distribution point provided by the UPU.
- 3.2.2 Before Installation, it shall be the Licensee's obligation to carry out all tasks necessary to fulfil the requirements that are a prerequisite for Installation. The Licensee shall also ensure that the Device on which Installation is to take place is in good working order and operating condition.
- 3.2.3 The Licensee shall bear all benefits and risks from the Effective Date of Installation of the UPU App.

#### 3.3 *Documentation*

- 3.3.1 The UPU shall provide Documentation upon Installation. The UPU reserves all rights to the information contained therein. The Documentation shall be maintained by the UPU in connection with the supply of New Releases.

#### 3.4 *Access to the UPU Software*

- 3.4.1 If so required in the use of the UPU Apps, the Licensee shall be granted a link-up connection to the UPU Software, in order to enable the Licensee to exchange data.
- 3.4.2 The UPU Software shall be accessed through Internet connections provided by the Licensee's own Internet Service Provider.

### 3.5 *Maintenance*

- 3.5.1 The UPU shall ensure that the UPU Apps perform substantially in accordance with the functions described. The UPU's obligation to provide Maintenance shall commence on the Effective Date.
- 3.5.2 Subject to the Warranty provisions in article 8, Maintenance shall cover the UPU Apps supplied by the UPU and the UPU Software administered by the UPU Service Operator.

### 3.6 Licensee

- 3.6.1 The UPU shall hereby grant the Licensee a non-exclusive and non-transferable licence to install and use the UPU Apps and the Documentation throughout the term of these GTC solely for the purposes specified in these GTC.
- 3.6.2 As required by the UPU, the Licensee shall install and use any New Releases of the App delivered by the UPU, together with any amended or substituted Documentation.
- 3.6.3 The Licensee shall not decompile, reverse engineer, disassemble or otherwise reduce any part of the UPU Apps to human-readable form nor permit any third party to do so. Furthermore, the Licensee shall not copy or otherwise modify or adapt the UPU Apps, or create derivative works based upon the UPU Apps.

## **4 Data protection and security**

- 4.1 The data electronically transmitted to or exchanged through the UPU Software and UPU Apps shall be confidential. Advanced security technology is used by the UPU to protect data from unauthorized transmission or access.
- 4.2 Depending on the UPU Software, UPU Apps and interconnected networks associated therewith, data may be digitally signed and transferred files may be encrypted.
- 4.3 Data shall only be used for the purpose of the Installation and use of UPU Apps as defined in articles 1 and 2 of these GTC.
- 4.4 Without prejudice to the foregoing obligations, the UPU shall have access to data for control of quality of service and for statistical purposes. The UPU may also publish non-personal aggregated data.
- 4.5 In case of Interconnection of the UPU Software with other networks, data shall be exchanged between the networks and may be used by the owner of the interconnected network in accordance with the provisions of this article.
- 4.6 The Licensee is the owner of its raw Data. The UPU shall have the intellectual property rights to aggregated Data whenever aggregated by the UPU in accordance with the relevant decisions of its bodies.
- 4.7 Whenever the processing or storage of Data occurs within the UPU Software, UPU Apps or any other facility controlled or owned by the UPU, the treatment of such data, including any mandatory data retention terms, shall be regulated by the applicable law defined in article 16.2 of these GTC.
- 4.8 The Licensee acknowledges and agrees that the UPU may share infrastructure, systems and technology with other postal supply chain stakeholders in the UPU Network in accordance with the relevant decisions of its bodies, with the aim of providing an innovative, relevant, consistent and safe experience across all UPU Apps that the Licensee may install and use.

## **5 Licensee's commitments**

- 5.1 The UPU Apps shall be used only in conformity with these GTC, as well as with any applicable UPU regulations to which the Licensee may be subject. Furthermore, the Licensee shall ensure that UPU Apps are used only in accordance with any additional requirements set by national legislation to which the Licensee is subject, including without limitation any directives, recommendations and standards on data protection, terrorism financing and money laundering.

- 5.2 The Licensee warrants and represents that it shall be responsible for installing and using the operating system platform required by the UPU for installation and use of the UPU Apps, as further defined in these GTC.
- 5.3 Whenever the processing or storage of data occurs outside the UPU Network on the premises of the Licensee, the treatment of such data, including any mandatory data retention terms, may be regulated by the applicable law on the territory of the Licensee.

## **6 Fees and charges**

- 6.1 The UPU reserves the right to apply charges for installation and use of the UPU Apps, at any time and for any reason.
- 6.2 The Licensee shall be solely responsible for any and all carrier data plans, Internet access and any other access or data costs or fees incurred from third parties, as well as other fees associated with its use of UPU Apps.

## **7 Tax exemption**

Pursuant to article 1.6, the UPU is exempt from all direct taxes and from customs restrictions, duties, and charges of a similar nature in respect of articles imported or exported for its official use.

## **8 Warranty**

The UPU provides UPU Apps on an “as is” and “as available” basis without any express or implied warranties, including without limitation warranties of merchantability, fitness for a particular purpose, title, non-infringement, and freedom from computer virus or other harmful code. Moreover, the UPU does not warrant that any information provided by the UPU will be accurate, complete, or useful, that the UPU Apps will always be operational, error free, secure, or safe, or that the UPU Apps will function without disruptions, delays, or imperfections.

## **9 Liability**

- 9.1 In no event shall a Party be liable for consequential, incidental, indirect, punitive or special damages, including without limitation damages related to loss of profits, loss or delay of data, business interruptions or any commercial damages or losses, loss of goodwill or anticipated savings, claims from third parties or losses due to viruses, any other harmful components or any unauthorized access to or modification of transmissions of data. The above limitations shall not apply to events caused intentionally or by the gross negligence of a Party or its employees, agents, representatives or subsidiaries.
- 9.2 The Licensee also acknowledges and agrees that in no event shall the UPU be liable for any loss or damages incurred by the Licensee as a result of, or in connection with, the Licensee’s use of Third Party Content as per the conditions specified in article 12.3.
- 9.3 The UPU shall not be held liable for decisions taken by the Licensee or by any third party appointed by the Licensee. Similarly, the UPU shall not, under any circumstances, be held liable for any content published by the Licensee on the UPU Apps, over which the UPU has neither oversight nor verifying or moderating role of any sort.
- 9.4 The UPU does not make any guarantee to the Licensee that the UPU Apps offered will meet all of the Licensee’s needs and expectations.
- 9.5 In no event shall the UPU’s total liability to the Licensee for the aforementioned damages exceed i) one Swiss franc (1 CHF) or ii) the total amount paid by the Licensee in accordance with article 6.1, whichever is higher.

## **10 Assignment and sublicensing**

- 10.1 The Licensee shall not assign, sublicense, subcontract, pledge or otherwise transfer or dispose of the GTC, or any of the rights and obligations under it, without the prior written consent of the UPU. Such consent may not be unreasonably withheld, provided the rights of the UPU can be sufficiently protected and the Licensee shall act as guarantor for the continued fulfilment of obligations under the GTC.
- 10.2 The UPU shall be entitled to wholly or partly assign, pledge or otherwise transfer to a third party, the GTC and all rights and obligations under the GTC, including its intellectual property rights as referred to in article 12.
- 10.3 Furthermore, the UPU shall be entitled to subcontract all or part of its obligations under the GTC. Such subcontracting shall not relieve the UPU of any of its obligations under the GTC or from its responsibility for any related activities performed by the subcontractor.

## **11 Confidentiality and publicity**

- 11.1 The UPU shall be entitled to disclose information relating to the use of UPU Apps to the extent required pursuant to its Acts or the relevant decisions of its bodies.
- 11.2 The UPU Apps, Documentation and all related computer-recorded data, techniques and algorithms in relation thereto shall be considered as confidential information and/or trade secrets.
- 11.3 These obligations shall survive the termination of the GTC between the Licensee and the UPU.

## **12 Property rights**

- 12.1 The UPU Apps are licensed, not sold, to the Licensee strictly for Installation and use under these GTC. Accordingly, the Licensee hereby acknowledges and agrees that the UPU Apps and their Documentation are proprietary and protected by law and that all rights thereto, including without limitation copyrights, patents, trademarks, domains, logos, trade dress, trade secrets, and other intellectual property rights are owned by or vested in the UPU or its third party licensors. The Licensee shall have no rights herein, with the exception of the rights of use expressly granted by the GTC. All rights not expressly granted herein shall be reserved to the UPU.
- 12.2 The Licensee shall not modify or remove any copyright or proprietary notices on the UPU Apps or Documentation and shall reproduce such notices on any copies of the UPU Apps or Documentation or any part thereof it may make in the form in which they appear on the original.
- 12.3 The Licensee acknowledges and agrees that UPU Apps may contain, provide access to or enable the Licensee to include (at the Licensee's initiative) links to services belonging to third parties or other third-party content and/or functionality (hereinafter collectively "Third Party Content"). In this regard, the UPU shall not be liable for any such Third Party Content, including the accuracy, availability, opinions, privacy practices, reliability or other elements of or contained in the Third Party Content. The Licensee further acknowledges and agrees that inclusion of, linking to, or use of such Third Party Content shall be at the Licensee's sole risk and that it shall not imply approval or endorsement thereof by the UPU.
- 12.4 These obligations shall survive the termination of the GTC between the Licensee and the UPU.

## **13 Termination and effects of termination**

- 13.1 These GTC between the UPU and the Licensee shall enter into force on the Effective Date.
- 13.2 Deleting the UPU App from the Licensee's Device shall be deemed as termination of the Licence provided by the UPU to the Licensee.
- 13.3 Upon termination of these GTC, all rights granted to the Licensee shall cease and the Licensee shall cease all activities authorized under these GTC, without prejudice to articles 11.4, 12 and 14.

## 14 Use of emblem, name or initials of the UPU

The Licensee shall not use the emblem, name or initials of the UPU in connection with its activities for purposes of commercial advantage or goodwill. The Licensee shall take all reasonable measures to ensure compliance with this provision. This obligation shall survive the termination of the contractual relationship with the UPU.

## 15 Settlement of disputes

- 15.1 *Amicable settlement:* The Parties shall use their best efforts to amicably settle any dispute, controversy, or claim arising out of these GTC or the breach, termination, expiration or invalidity thereof. Where the Parties wish to seek such an amicable settlement through conciliation, the conciliation shall take place in accordance with the Conciliation Rules then obtaining of the United Nations Commission on International Trade Law (UNCITRAL), or according to such other procedure as may be agreed between the Parties in writing.
- 15.2 *Arbitration:* Any dispute, controversy, or claim between the Parties arising out of these GTC or the breach, termination, expiration or invalidity thereof, unless settled amicably under article 15.1, above, within sixty (60) days after receipt by one Party of the other Party's written request for such amicable settlement, shall be referred by either Party to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining.
- 15.3 The number of arbitrators shall be one. If the Parties are unable to designate an arbitrator within thirty (30) days of receipt of the notification of a request for arbitration, the arbitrator shall, at the request of one of the Parties, be appointed by the President of the Permanent Court of Arbitration in The Hague, Netherlands.
- 15.4 The arbitrator's ruling shall be final and binding, and no appeal to a court or any other jurisdiction shall be allowed.
- 15.5 The place of arbitration shall be Berne, Switzerland, and the language of arbitration shall be English or French.

## 16 Miscellaneous

- 16.1 *Entire agreement:* These GTC shall constitute the entire agreement between the Parties, and shall supersede any and all other previous agreements, arrangements and/or understandings, whether written or oral, between the Parties.
- 16.2 *Applicable Law:* These GTC and any annex, appendix, or document related thereto shall be governed by general principles of law to the exclusion of any single national system of law. Such general principles of law shall include the UNIDROIT General Principles of International Commercial Contracts (2010).
- 16.3 *Waiver:* Nothing relating to the installation, access or use of the UPU Apps by the Licensee shall constitute a waiver, explicit or implied, of any of the privileges and immunities of the UPU.
- 16.4 *Severability:* Should any provision be invalid or prohibited, such provision shall not invalidate the remainder of such provision or the remaining provisions.